

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
**MAR 21 2008**  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_ Deputy

CLIFFORD SCOTT MEDLEY,

Petitioner,

v.

NATHANIEL QUARTERMAN, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,

Respondent.

§ 2:07-CV-0051

**ORDER OVERRULING OBJECTIONS,**  
**ADOPTING REPORT AND RECOMMENDATION,**  
**GRANTING RESPONDENT'S MOTION TO DISMISS,**  
**AND DISMISSING PETITION FOR A WRIT OF HABEAS CORPUS**

Came this day for consideration the Petition for a Writ of Habeas Corpus by a Person in State Custody filed by petitioner. On February 11, 2008, the United States Magistrate Judge issued a Report and Recommendation in this cause, recommending therein that respondent's motion to dismiss be granted and that petitioner's application for a writ of habeas corpus be dismissed as time barred. As of this date, petitioner has not filed objections to the Magistrate Judge's Report and Recommendation. Petitioner filed objections to the Magistrate Judge's Report and Recommendation on March 13, 2008.

In his March 13<sup>th</sup> Objections to the Magistrate Judge's Report and Recommendation, petitioner asserts actual innocence. Petitioner did not assert actual innocence in his petition nor has he made any attempt to amend his petition. Petitioner has not made the necessary showing by clear and convincing evidence that no reasonable juror could have found him guilty beyond a reasonable doubt. *Sawyer v. Whitley*, 505 U.S. 333, 112 S.Ct. 2514, 120 269 L.Ed.2d (1992);

*Murray v. Carrier*, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986). A claim of actual innocence does not warrant equitable tolling where the defendant has not made the requisite showing of actual innocence. See *Felder v. Johnson*, 204 F.3d 168, 171 (5<sup>th</sup> Cir. 2000).

The undersigned United States District Judge has made an independent examination of the record in this case. The Magistrate Judge's Report and Recommendation is hereby ADOPTED. Accordingly, the motion to dismiss filed by respondent is GRANTED, and the petition for a writ of habeas corpus filed by petitioner is hereby DISMISSED. Let judgment be entered accordingly.

IT IS SO ORDERED.

ENTERED this 27 day of March, 2008.



MARY LOU ROBINSON  
UNITED STATES DISTRICT JUDGE